

### REMARKS

A reconsideration of the above-identified application is respectfully requested in view of the foregoing amendments and following discussion.

#### **Claim Rejection – 35 USC § 103**

Claims 11-16 were rejected by the examiner under 35 USC 103(a) as being unpatentable over Lyden (U.S. Patent No. 3,540,276) and further in view of Rieke et al. (U.S. Patent No. 5,379,913). Independent claim 11 has been amended to incorporate the features of claim 21, which more clearly present the inventive contents of claim 11, and provide a more clearly definitive basis for supporting claims dependent therefrom. Furthermore, it is apparent to the Applicants that independent claim 11, as amended, clearly avoids the disclosures presented in Lyden and Reike et al.

The Examiner, in his rejection of the claims, relies on Lyden as his base reference. It is to be noted that Lyden was assigned to the same assignee as the present application. Applicants were fully aware of Lyden, and in fact, cited Lyden in their IDS. They are also aware of each and every improvement made to the Lyden fluid detection device by the common assignee since the initial Lyden disclosure, as well to as areas containing improvements in this art, including their specific disclosure set forth herein. As persons “skilled in the art” of fluid level detection apparatus, they are convinced that the disclosure in the Reike et al patent in no way relates to the present field of endeavor. As has been set forth in great detail in the MPEP, Section 2141.01(a), and in its cited decision in *In re Oetiker*, 977 F.2<sup>nd</sup> 1443, the court held that the secondary reference was not within the field of Applicants’ endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned, because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. Likewise, to require the inventors herein to be aware of a means for sealing a 55-gallon drum


when pursuing a problem in a fluid sight glass apparatus, is beyond the pervue of the MPEP Section 2141.01(a) citation and the reasoning in court decisions cited therein. Accordingly, it is respectfully requested that the Reike et al reference be removed and the Section 103(a) rejection be withdrawn.

The Examiner further argues that the motivation to combine the teachings of Rieke et al with the teaching of Lyden is that "welding, riveting, threading, crimping, gluing, etc. are all well known means of securing or attaching parts." He further argues, "that while Lyden uses a spot weld means to secure the casing, Rieke discloses another method of securing parts in fitting relationship such as to provide a seal the (sic) utilizes a method other than welding." To this, Applicants demur; and again refer to Section 2141.01(a) of the MPEP and its citations. Further, amended claim 11, in the light of 37 CFR 1.111(b), also cited by the Examiner, differentiates from the prior art in sufficient detail to accord patentability to the claim.

The Examiner next discusses sealing means, as applied to a fluid level detection apparatus. It is agreed that the Applicants are charged with knowledge of o-rings and other means of sealing as disclosed in their originally disclosed reference to the Gruett U.S. Patent No. 5,323,653, also assigned to the present assignee. Accordingly, the present invention as claimed herein more specifically applies to the detent means for holding the end member to the shield member. As so claimed, it is believed that independent claim 11, and its amended and originally presented dependent claims 12-16 and 20 now recite patentable subject matter.

Applicants request that amended claim 11, claims 12 – 16, inclusive, and claim 20 be passed to an early allowance.

Respectfully Submitted,

By   
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